HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.318 of 2007

Between:

Jitender Kumar and two others …Appellants

And

District Collector,
Ranga Reddy District
and two others. …Respondents

:: J U D G M E N T ::

Counsel for the appellants : Sri B. Vijaysen Reddy

Counsel for respondent Nos.1 and 2 : Government Pleader for Revenue

(Assignment)

19th April, 2007

Per G.S. Singhvi, C.J.

Having failed to persuade the learned Single Judge to entertain their prayer for restraining the respondents from interfering with their possession of land measuring Ac.2.00 comprised in Survey No.48/23 of Katedan Village, Rajendra Nagar Mandal, Ranga Reddy District, the appellants have preferred this appeal under Clause 15 of the Letters Patent.

A perusal of the record shows that the land in question was assigned to one Piila Venkaiah in 1961-62. After the death of the assignee, his legal heirs namely, Smt. Poila Gandamma, Sri Poila Sayanna and Smt. Poila Sugunamma sold the land to appellant No.1 – Jitender Kumar and appellant No.2 – Master Sunil Kumar (minor), both sons of Sri Jammat Raj vide separate registered sale deeds dated 8-3-1989. Appellant No.3 – Mohammed Abdul Bari claims to

have contracted further purchase of the land in question. He entered into an agreement of sale-cum-general power of attorney dated 25-1-2007 with appellant Nos.1 and 2.

In the meanwhile, Mandal Revenue Inspector, Rajendranagar submitted report regarding the sale of Ac.1.00 land situated in Survey No.48/23 in violation of the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short, 'the 1977 Act'). On receipt of the report, Deputy Collector and Mandal Revenue Officer, Rajendranagar Mandal, Ranga Reddy District (respondent No.2) issued notice to appellant No.1 in Form-I prescribed under Rule 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 1977 for taking possession of the assigned land. The notice appears to have been duly served on appellant No.1, but he did not contest the same. Therefore, vide proceedings No.B/6960/2004, dated 27-11-2006, respondent No.2 passed order for resumption of the assigned land and eviction of appellant No.1 {That order has been produced before the Court by the learned Government Pleader for Revenue (Assignment)}.

On coming to know of the aforementioned order, the appellants filed Writ Petition No.2962 of 2007 for restraining the respondents from interfering with their possession over the land in question and dumping garbage over it.

During the course of hearing of the writ petition, learned Government Pleader for Revenue (General-T) brought to the notice of the learned Single Judge that respondent No.2 had initiated action under the 1977 Act and issued proceedings dated 27-11-2006 for resuming the land. After taking cognizance of his statement, the learned Single Judge dismissed the writ petition with an observation that the writ petitioners can prefer an appeal against the order of resumption.

Sri B. Vijaysen Reddy, learned counsel for the appellants vehemently argued that the order of resumption passed by respondent

No.2 is ex facie illegal and liable to be quashed because proceedings under the 1977 Act could not have been initiated after a time gap of 17 years and, in any case, the land could not have been resumed to the government without giving an effective opportunity of hearing to appellant Nos.1 and 2. He further argued that the learned Single Judge gravely erred by relegating the appellants to the remedy of appeal ignoring the fact that no order of resumption has been passed in respect of Ac.1.00 land and order dated 27-11-2006 was passed without giving effective opportunity of hearing to appellant No.1. Sri Reddy emphasised that even if appellant No.1 could be asked to avail the remedy of appeal, appellant No.2 cannot be deprived of his property without following the procedure established by law and without complying with the rules of natural justice.

The learned Government Pleader supported the order challenge and argued that the learned Single Judge did not commit any error by relegating the appellants to the remedy of appeal. He submitted that the sale of the assigned land to appellant Nos.1 and 2 is nullity and they cannot seek intervention of this Court for protecting their possession.

We have thoughtfully considered the entire matter. In our opinion, the learned Single Judge did not commit any error by relegating the appellants to the remedy of appeal insofar as order dated 27-11-2006 is concerned because it is neither the pleaded case nor their counsel could show that the remedy of appeal available to them under Section 4-A of the 1977 Act is not an effective alternative remedy or that there is any extraordinary reason for making a departure from the settled law that the High Court will not entertain writ petition under Article 226 of the Constitution of India if an effective alternative remedy is available to the petitioner. The rule of alternative remedy is well recognised and it is sufficient for us to make a reference to the judgments of the Supreme Court in **A.V. Venkateshwaran v. R.S. Wadhwani**[1], **Thansingh Nathmal v. Superintendent of**

Taxes[2], Baburam v. Zilla Parishad[3], Titaghur Paper Mills Co. Ltd. v. State of Orissa[4], Champa Lal v. I.T. Commissioner[5], J.M. & Co. v. Agricultural I.T. Officer, Assam[6], C.I.T. v. Ramendra Nath Ghosh[7], Swadeshi Cotton Mills Co. Ltd., v. Government of U.P.[8], Gujarat University v. N.U. Rajguru[9], State of H.P. v. Raja Mahendra Pal[10], L.L. Sudhakar Reddy v. State of A.P.[11], State of Bihar v. Jain Plastics & Chemicals Ltd.,[12], Harbanslal Sahnia v. Indian Oil Corporation Ltd.,[13], ABL International Ltd., v. Export Credit Guarantee Corporation of India Ltd.,[14].

The apprehension of the appellants that they are likely to be dispossessed from the remaining portion of the land is not supported by any tangible evidence and we do not see any reason to act upon the bald assertion contained in the affidavit of appellant No.3 that the official respondents will dispossess them without following due process of law.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.615 of 2007 filed by the appellants for interim relief is also dismissed.

G.S. SINGHVI, CJ

19th April, 2007

C.V. NAGARJUNA REDDY, J

ARS

[1] AIR 1961 SC 1506

[2] AIR 1964 SC 1419

[3] AIR 1969 SC 556

[4] (1983) 2 SCC 433

[5] AIR 1970 SC 645

[6] AIR 1970 SC 1980

[7] (1972) 4 SCC 379

[8] (1975) 4 SCC 378

[9] AIR 1988 SC 66

[10] (1999) 4 SCC 43

[11] (2001) 6 SCC 634

[12] (2002) 1 SCC 216

[13] (2003) 2 SCC 107

[14] (2004) 3 SCC 553